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BEYOND THE POLEMICS:

REALISTIC OPTIONS TO HELP DIVORCING FAMILIES MANAGE DOMESTIC VIOLENCE

ELAYNE E. GREENBERG*

INTRODUCTION

Children, adult survivors, and their batterers who remain engaged in violence, even after they live apart, are living legacies of the historical perniciousness of domestic violence, a legacy that must change.¹ True, over the past thirty years the politicization of domestic violence has raised public awareness,² spurred legislative reforms,³ and propelled court innovations.⁴ However,

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¹ See ABA Commission on Domestic Violence, Survey of Recent Statistics, <http://www.abanet.org/domviol/statistics.html#prevalence>. In a 1995-1996 study conducted in the 50 States and the District of Columbia, nearly 25% of women and 7.6% of men were raped and/or physically assaulted by a current or former spouse, cohabiting partner, or dating partner/acquaintance at some time in their lifetime. *Id.* In addition, approximately 1.3 million women and 835,000 men are physically assaulted by an intimate partner annually in the United States. *Id.*; PATRICIA TJADEN & NANCY THOENNES, U.S. DEPT OF JUST., FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF INTIMATE PARTNER VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY, *iv* (2000), available at <http://www.ojp.usdoj.gov/nij/pubs-sum/183781.htm>. Finally, intimate partner violence made up 20% of all nonfatal violent crime experienced by women in 2001. See also CALLIE MARIE RENNISON, U.S. DEPT OF JUST., BUREAU OF JUSTICE STATISTICS CRIME DATA BRIEF: INTIMATE PARTNER VIOLENCE, 1993-2001 1 (2003), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/ipv01.pdf>.

² See THE BURNING BED (Metro Goldwyn Mayer 1984); see also The Domestic Violence Awareness Month, <http://dvam.vawnet.org/index.php> (last visited April 20, 2010).

³ See Violence Against Women Act, Pub. L. No. 103-322, 108 Stat. 1902 (1994); N.Y. DOM. REL. LAW § 240 (2009) (considering domestic violence as a factor in granting custody).

⁴ See THE TWENTY-SIXTH ANNUAL REPORT OF THE CHIEF ADMINISTRATOR OF THE COURTS FOR THE CALENDAR YEAR 2003 24 (2003), www.nycourts.gov/reports/annual/pdfs/2003annualreport.pdf (noting that in 2001, Integrated Domestic Violence Courts were

the children, survivors, and batterers who still live domestic violence after divorce know all too well that all of our political advancements, legal victories, court innovations, and social awareness have not stopped the violence they live within their day-to-day lives. For many of these families, an order of protection or a judgment of divorce does not cease the violence.⁵

Divorce provides ample, ongoing opportunities for the violence to continue. Children of divorce are often used as conduits to continue the abuse.⁶ Incessantly maligning a parent, inconsistently complying with agreed upon parenting schedules, unrelenting legal assaults against the other parent, insidiously brainwashing the child against the other parent, intentionally defaulting on support obligations, and sabotaging the other parent's parenting efforts are some weapons the abuser uses to continue exerting control.⁷ Often the batterer disguises his need for excessive control, a hallmark of domestic violence, under the cloak of "good parenting."⁸ Under this guise, the batterer will exercise control by excessively monitoring the other's parenting, being hyper vigilant about what the child is doing during time spent with the other parent and deriding any parenting decision that is not within the batterer's control as counter to "my child's best interest."⁹

developed, in which one judge is assigned to handle all the legal issues relating to a domestic violence case); see also N.Y. Comp. Codes R. & Regs. tit. 22, § 144 (2009) (providing that the New York State Parent Education and Awareness Program, which is certified by the Office of Court Administration, offers information to parents about the impact of parental breakup or conflict on children and how parents can help their children manage family reorganization); Barbara A. Babb, *Reevaluating Where We Stand: A Comprehensive Survey of America's Family Justice Systems*, 46 Fam. Ct. Rev. 230, 230–35 (2008) (advocating using a unified family court model to restructure the family court system).

⁵ See, e.g., Julia C. Mead, *When an Order of Protection Does Not Work*, N.Y. TIMES, Jul. 53, 2005, at 14LI (noting that in several recent domestic violence murder cases, the accused killers had been charged with misdemeanors after violating protection orders or had been convicted of other crimes related to abusing the victim); NEIL JACOBSON & JOHN GOTTMAN, *WHEN MEN BATTER WOMEN: NEW INSIGHTS INTO ENDING ABUSIVE RELATIONSHIPS* 204–08 (Simon & Schuster 1998); Janet R. Johnston, *Building Multidisciplinary Professional Partnerships With the Court on Behalf of High-Conflict Divorcing Families and Their Children: Who Needs What Kind of Help?*, 22 U. ARK. LITTLE ROCK L. REV. 453, 466–78 (1999–2000).

⁶ See WILLIAM BERNET & DON R. ASH, *CHILDREN OF DIVORCE: A PRACTICE GUIDE FOR PARENTS, THERAPISTS, ATTORNEYS, AND JUDGES* 13–17 (Krieger Publ'g Co., 2d ed. 2007).

⁷ See LUNDY BANCROFT & JAY G. SILVERMAN, *THE BATTERER AS PARENT: ADDRESSING THE IMPACT OF DOMESTIC VIOLENCE ON FAMILY DYNAMICS* 75–83 (2002).

⁸ See *Id.* at 122–26.

⁹ See Peter Jaffe, Janet R. Johnston, Claire V. Crooks & Nicholas Bala, *Custody Disputes Involving Allegations of Domestic Violence: Toward a Differentiated Approach to*

For many, domestic violence is like a chronic disease: no cures, some remissions, ever present. The most potentially beneficial and realistic goal is to figure out how to keep survivors and batterers disengaged so that they might minimize the conflict to which their children are exposed.¹⁰ Management is the operative word. Why is this happening? What interventions might we offer to better and more realistically serve these families?

Despite the courts' commitment to combating this scourge, the courts have not always been successful in providing the protection these families need.¹¹ In family and divorce matters, the traditional fault-based inquiry of the courts, which focuses on whether the domestic violence has in fact occurred, is a query that too often fails to accurately confirm or reject the existence domestic violence.¹² Frequently, batterers present as more credible witnesses, survivors appear unbelievable, proof of emotional abuse challenges our evidentiary standards, and cognitive dissonance makes horrific allegations more difficult to accept as reality.¹³ Furthermore, many domestic violence cases before the courts do not present as domestic violence cases. Instead many cases are masked as contested custody and failure to support cases.¹⁴

It is widely recognized that the fault-based inquiry that is so fundamental to our justice system has been ineffective in

Parenting Plans, 46 FAM. CT. REV. 500, 501-04 (2008); see also JANET R. JOHNSTON & LINDA E.G. CAMPBELL, *IMPASSES OF DIVORCE: THE DYNAMICS AND RESOLUTION OF FAMILY CONFLICT* 1-23 (1988); EDWARD TEYBER, *HELPING CHILDREN COPE WITH DIVORCE* 87-91 (1992).

¹⁰ See, e.g., The AFCC Task Force on Parenting Coordination, *Guidelines for Parenting Coordination*, 44 FAM. CT. REV. 164, 169 (2005); Johnston, *supra* note 5, at 466-78.

¹¹ See Nancy Ver Steegh, *Yes, No, and Maybe: Informed Decision Making About Divorce Mediation in the Presence of Domestic Violence*, 9 WM. & MARY J. WOMEN & L. 145, 159-70 (2003).

¹² See Gregory Firestone & Janet Weinstein, *In the Best Interest of the Children: A Proposal to Transform the Adversarial System*, 42 FAM. CT. REV. 203, 203-07 (2004). Criminal justice is about ascertaining culpability. However, Family and Supreme Court are involved in addressing more nuanced matters that are not adequately addressed by the adversarial approach. See *id.* at 203. In recognition of this, the Family and Supreme Court have integrated court innovations in the way they work to be more responsive to the problem. See N.Y. Comp. Codes R. & Regs. tit. 22, § 144 (2009).

¹³ See Elizabeth M. Schneider, *Domestic Violence Law Reform in the Twenty-First Century: Looking Back and Looking Forward*, 42 FAM. L. Q. 353, 355-56 (2008); JOAN MEIER, *RATES AT WHICH BATTERERS RECEIVE CUSTODY* (2005), <http://www.stopfamilyviolence.org/info/custody-abuse/statistics/rates-at-which-batterers-receive-custody>.

¹⁴ See Johnston, *supra* note 5, at 455; see also BANCROFT & SILVERMAN, *supra* note 7, at 122-29.

securing family justice.¹⁵ Acknowledging the need for change, court administrations have heralded innovations with a more problem-solving focus over the past twenty years.¹⁶ Increasingly, courts have systematically integrated alternative dispute resolution interventions such as parent education, mediation, and parenting coordination into their court offerings so that they are now integral additions to this problem-solving focus.¹⁷ Yet, families with domestic violence histories have been excluded from participating in these innovations. The oft-cited rationale for excluding these families from the opportunity to resolve their conflicts in these alternative forums is protection and safety.¹⁸ Critics of dispute resolution assert that dispute resolution forums, sans protection of the courts, will harm children and survivors.¹⁹ What a paradox! Sadly, courts have failed to consistently protect survivors and their families.²⁰ Rather, for some survivors and their children, courts have become a sword rather than a shield that batterers learn to use to continue their abuse.²¹

While this debate continues, five painful realities persist:

1. There is no agreement about what constitutes domestic violence.²²
2. There is no fool-proof screening for domestic violence.²³
3. Courts have been ineffective in stopping many forms of

¹⁵ See MATRIMONIAL COMMISSION REPORT TO THE CHIEF JUDGE OF THE STATE OF NEW YORK (2006), available at <http://www.courts.state.ny.us/reports/matrimonialcommissionreport.pdf>; see also ANDY I. SCHEPARD, CHILDREN, COURTS, AND CUSTODY: INTERDISCIPLINARY MODELS FOR DIVORCING FAMILIES 22–44 (2004).

¹⁶ See N.Y. Comp. Codes R. & Regs. tit. 22, § 144 (2009); see also The AFCC Task Force on Parenting Coordination, *supra* note 10, at 165.

¹⁷ See The AFCC Task Force on Parenting Coordination, *supra* note 10, at 165–66; see also MEIER, *supra* note 13; JoAnne Pedro-Carroll, Ellen Naknikian, & Guillermo Montes, *Assisting Children Through Transition: Helping Parents Protect Their Children from the Toxic Effects of Ongoing Conflict in the Aftermath of Divorce*, 39 FAM. CT. REV. 377, 379–80 (2001).

¹⁸ See Ver Steegh, *supra* note 11, at 180–97.

¹⁹ See Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L. J. 1545, 1600–05 (1991).

²⁰ See Firestone & Weinstein, *supra* note 12, at 203–07.

²¹ See BERNET & ASH, *supra* note 6, at 13–17.

²² See Schneider, *supra* note 13, at 354–55; see also Janet R. Johnston & Linda E.G. Campbell, *A Clinical Typology of Interparental Violence in Disputed-Custody Divorces*, 63 Am. J. Orthopsychiatry 190, 193–95 (1993); Nancy Ver Steegh & Claire Dalton, *Report from the Wingspread Conference on Domestic Violence and Family Courts*, 46 FAM. CT. REV. 454, 455–60 (2008).

²³ See Jane C. Murphy & Robert Robinson, *Domestic Violence and Mediation: Responding to the Challenges of Crafting Effective Screens*, 39 FAM. L. Q. 53, 61–64 (2005).

violence.²⁴

4. Batterers are statistically more successful than survivors at securing custody of their children.²⁵
5. Children are the casualties of their family's violence.²⁶

Given these painful realities, this discussion will go beyond the polemics and advocate more realistic supports to offer these families. Too much energy has been wasted trying to ascertain the veracity of abuse allegations in divorce and family cases while children and survivors continue to live abuse. The discourse must change. The more fruitful discussion is how to disengage parents in conflict, regardless of fault, whether real or contrived, so that their conflict is minimized in their day-to-day lives.

Critical to having this different discussion is a re-focusing on the survivor's sense of agency, rather than her victimization. Through this different interpretive lens, this discussion will suggest several interventions to minimize opportunities for abuse and maximize opportunities for enhancement of human agency. Parallel parenting and alternative dispute resolution interventions include parenting education, mediation, and parenting coordination.

I. TO BEGIN - FIVE PAINFUL REALITIES

A. *There is no agreement about what constitutes domestic violence.*²⁷

Confusion abounds about what actually constitutes domestic violence.²⁸ The following true anecdote highlights the problem.

²⁴ See, e.g., Mead, *supra* note 5.

²⁵ See Demie Kurz, *Social Science Perspectives on Wife Abuse: Current Debates and Future Directions*, 3 GENDER & SOC'Y 489,498-500 (1989); see also LUNDY BANCROFT, WHY DOES HE DO THAT? INSIDE THE MINDS OF ANGRY AND CONTROLLING MEN 263-66, 291-310 (2002); MEIER, *supra* note 13.

²⁶ See Janet R. Johnston, *A Child-Centered Approach to High-Conflict and Domestic-Violence Families: Differential Assessment and Interventions*, 12 J. FAM. STUD. 15, 22 (2006); see also Donald G. Dutton, *Witnessing Parental Violence as a Traumatic Experience Shaping the Abusive Personality*, 3 J. AGGRESSION MALTREATMENT & TRAUMA 59, 59-67 (2000).

²⁷ See Ver Steegh & Dalton, *supra* note 22, at 455-60; see also Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications For Child Custody*, 65 LA. L. REV. 1379, 1381-95 (2005); Johnston & Campbell, *supra* note 22, at 193-95.

²⁸ See Ver Steegh & Dalton, *supra* note 22, at 455; see also Schneider, *supra* note 13,

In recognition of my work in domestic violence, my dear friend Jill bought me a present from a domestic violence fundraiser, a black wife beater T-shirt defined in silver glitter by the word "Knockout" across the front and "Domestic Violence" across the back. Imagine! Even this well-intentioned fundraising group got it so wrong. They sexualized domestic violence on a wife beater T-shirt!

To add to our confusion, there is not one prototype for domestic violence.²⁹ Physical abuse, emotional abuse, financial abuse, and parental alienation are all variations of how control may be exerted when there is domestic violence.³⁰ All domestic abuse does not look alike and all survivors do not have black eyes. Instead, many survivors have long lasting psychological scars that may not be visible to the eye.³¹ Let us not forget that the parent who plays mind games with his child by insidiously brainwashing the child, intentionally withholds needed support, or sabotages the other parent every step of the way is just as much an abuser as one who hits out during a time of rage.³²

In an attempt to clarify these differences, Janet Johnston has defined five typologies of domestic violence: ongoing or male episodic battering; female-initiated violence; male-controlled interactive violence; separation and post-divorce violence; and violence stemming from psychotic and paranoid reactions.³³ Each of these nuanced permeations of domestic abuse requires different responses from the courts.³⁴ Cookie cutter responses or one-size-fits-all solutions will not do.

*B. There is no foolproof screening for domestic violence.*³⁵

It should come as no surprise that given that there is no

at 354–55.

²⁹ See Schneider, *supra* note 13, at 354–56.

³⁰ See BANCROFT & SILVERMAN, *supra* note 7, at 75–83; see also Ver Steegh, *supra* note 27, at 1387–99.

³¹ See Schneider, *supra* note 13, at 354–55; see also ELIZABETH M. SCHNEIDER, BATTERED WOMEN & FEMINIST LAWMAKING 42–49 (2000).

³² See Domestic Abuse Intervention Project, *Power and Control Wheel* (2002), available at <http://www.duluth-model.org/documents/PhyVio.pdf> [hereinafter *Power and Control Wheel*]; see also Schneider, *supra* note 13, at 354–56.

³³ See Johnston & Campbell, *supra* note 22, at 193–98.

³⁴ See Ver Steegh, *supra* note 22, at 1381–95 (noting that the impact of domestic violence depends in large part on the context in which it occurs).

³⁵ See Murphy & Robinson, *supra* note 23, at 61–64.

agreement about what constitutes domestic violence, of course, there is no foolproof screening for domestic violence. Screenings such as those designed by Tolman, Ellis, and Girdner have limited efficacy.³⁶ Different domestic violence screenings are designed for specific types of violence, excluding the identification of others beyond their scope.³⁷ Most are not calibrated to account for the range of cultural expressions of violence.³⁸ To add to the problem, the screeners who administer these screening assessments have varying skills, education, and experience.³⁹ Interestingly, a commonly overlooked value of an even ineffective screening process is the fact that it creates an opportunity, sometimes for the first time, for the people being screened to self-assess if they are living domestic violence.⁴⁰ However, without effective and nuanced screening information, courts may be deprived of vital information they need about the family's interactions.⁴¹

*C. Courts have been ineffective in stopping many forms of violence.*⁴²

Because it is difficult to discern domestic violence with any degree of accuracy, it is particularly difficult for the court to stop many forms of violence.⁴³ Many of these cases appear in court as custody, visitation petitions, or divorce complaints, not as orders

³⁶ See Desmond Ellis & Noreen Stuckless, *Domestic Violence, Dove, and Divorce Mediation*, 44 FAM. CT. REV. 658, 659–63; see also LINDA GIRDNER, A.B.A. CT'R ON CHILDREN & THE LAW, DOMESTIC ABUSE AND CUSTODY MEDIATION TRAINING FOR JUDGES AND ADMINISTRATORS: INSTRUCTOR'S GUIDE 15 (1999) (underscoring the importance of effective and efficient methods for screening and advocating a three-tiered screening process); Alexandria Zylstra, *Mediation and Domestic Violence: A practical Screening Method for Mediators and Mediation Program Administrators*, J. DISP. RESOL. 253, 271–73, App. C–E (2001) (summarizing the Tolman Screening Model and Linda Girdner's Conflict Assessment Protocol).

³⁷ See Ver Steegh & Dalton, *supra* note 22, at 460–61.

³⁸ See *id.* at 461.

³⁹ See *id.*

⁴⁰ See, e.g., Alexandria Zylstra, *supra* note 36, at 272, App. D (describing Dr. Tolman's Psychological Maltreatment of Women Inventory, where separate male and female questionnaires inquire into the occurrence and frequency of abusive events in the relationship).

⁴¹ See Nancy Ver Steegh & Claire Dalton, *supra* note 22, at 462.

⁴² See, e.g., Mead, *supra* note 5; see also BANCROFT & SILVERMAN, *supra* note 7, at 99 (noting that married women living apart from their husbands experience nearly four times the frequency of physical assaults, sexual assaults, and stalking than women who are still willing to living with the batterer); SCHNEIDER, *supra* note 31, at 45.

⁴³ See Schneider, *supra* note 13, at 354–55.

of protection.⁴⁴ And, not all people come forward and self-identify, "I am a victim."⁴⁵ Some never disclose the abuse because of fear or shame, or because they do not know they are abused.⁴⁶ Others may falsely identify themselves as victims to gain an advantage in those courts.⁴⁷ Of those survivors who self-identify and seek the protection of the court, some are believed, but others are not.⁴⁸ Those who are believed and are able to prove their case are granted orders of protection. However, the reality is that orders of protection are effective only in stopping the hitting. The emotional abuse may continue.⁴⁹ Confounding the confusion, an admission or denial about domestic violence may or may not be an indication of domestic violence.

*D. Batterers are statistically more successful than survivors at securing custody of their children.*⁵⁰

For those who still believe in the infallibility of the legal system, they may react incredulously at this assertion. However, the research bears that in contested custody cases, the batterer is 70% more likely to prevail.⁵¹ There are several reasons for this confounding outcome. First, a survivor may appear less competent in managing her children. This is a consequence of the batterer's persistent efforts to undermine the survivor's parenting.⁵² Second, a batterer may manipulate the children to believe that he is the victim and convince them to align with him.⁵³ Third, a batterer usually performs better on psychological test administered during the course of a contested custody battle because domestic violence is about control, not pathology.⁵⁴ In

⁴⁴ See, *supra* note 5, at 455.

⁴⁵ See, e.g., SCHNEIDER, *supra* note 31, at 11. (excerpting a story about a battered woman in which the woman explained that she "loved" her batterer and would "have done anything for him").

⁴⁶ See *id.*; see also JACOBSON & GOTTMAN, *supra* note 5, at 49–53.

⁴⁷ See Johnston, *supra* note 5, at 455.

⁴⁸ See SCHNEIDER, *supra* note 31, at 109–11; see also MEIER, *supra* note 13.

⁴⁹ See NEIL JACOBSON & JOHN GOTTMAN, *supra* note 5, at 158–59.

⁵⁰ See Kurz, *supra* note 25, at 499–500; see MEIER, *supra* note 13; see also BANCROFT, *supra* note 25, at 257–66.

⁵¹ MEIER, *supra* note 13; see also BANCROFT, *supra* note 25, at 257–66.

⁵² See BANCROFT & SILVERMAN, *supra* note 7, at 116–17, 123–24; see also LUNDY BANCROFT, *supra* note 25, at 257–66.

⁵³ See BANCROFT, *supra* note 25, at 257–60; see BANCROFT & J SILVERMAN, *supra* note 7, at 116–17.

⁵⁴ See BANCROFT, *supra* note 25, at 263–64; see also BANCROFT & J SILVERMAN, *supra*

fact, a survivor, traumatized by the violence, often does not test as well as the batterer.⁵⁵ Fourth, in part because there is variability in the education, experience and sophistication of the custody evaluators, not all custody evaluators are able to ascertain if there is domestic violence.⁵⁶ Fifth, studies have shown that in contested custody cases, a father is more favored than the mother because of a gender and racial bias in the courts that looks more favorably at fathers in general.⁵⁷ Sixth, in the context where courts look more favorably at parents who promote their children's relationship with the other parent, courts may look unfavorably at a survivor who discourages her children's relationship with the batterer in an effort to shield them from further abuse.⁵⁸ Seventh, there are not enough skilled attorneys who understand the dynamics of family violence to provide effective representation for survivors and their children.⁵⁹ Finally, batterers frequently have more financial resources to fund their persistent litigation assaults.⁶⁰

E. Children are the casualties of their family's violence.⁶¹

Children in families where there is domestic violence have a greater likelihood of being physically and emotionally abused by the batterer.⁶² There is a direct correlation between domestic violence and child abuse.⁶³ Studies indicate that in families where there is domestic violence, there is a 30% to 60% chance

note 7, at 117–19.

⁵⁵ See BANCROFT, *supra* note 25, at 263–64; see also BANCROFT & SILVERMAN, *supra* note 7, at 117–19.

⁵⁶ See Ver Steegh & Dalton, *supra* note 27, at 460–61; see also BANCROFT & SILVERMAN, *supra* note 7, at 119–20.

⁵⁷ See BANCROFT & SILVERMAN, *supra* note 7, at 120–22; see also MEIER, *supra* note 13.

⁵⁸ See BANCROFT & SILVERMAN, *supra* note 7, at 122; see also BANCROFT, *supra* note 25, at 265.

⁵⁹ See BANCROFT & SILVERMAN, *supra* note 7, at 122; see also M.A. BARIS, C.A. COATES, B.B. DUVALL, C.B. GARRITY, E.T. JOHNSON, & E.R. LACROSSE, WORKING WITH HIGH CONFLICT FAMILIES OF DIVORCE: A GUIDE FOR PROFESSIONALS 11–14 (2001).

⁶⁰ See BANCROFT, *supra* note 25, at 263; see also BANCROFT & SILVERMAN, *supra* note 7, at 125.

⁶¹ See Johnston, *supra* note 26, at 22; see also Dutton, *supra* note 26, at 59–62; see also BANCROFT & SILVERMAN, *supra* note 7, at 128–29.

⁶² See Johnston, *supra* note 26, at 22; see also BANCROFT, *supra* note 25, at 245–47; see also BANCROFT & SILVERMAN, *supra* note 7, at 42–47.

⁶³ See Johnston, *supra* note 26, at 22; see also BANCROFT, *supra* note 25, at 245–47; see also BANCROFT & SILVERMAN, *supra* note 7, at 42–47.

that the batter will also abuse the child.⁶⁴ Beyond the physical abuse, children often suffer emotional abuse in all its permutations: put downs, rejections, and mind games.⁶⁵ Even those children who are not actual targets of abuse, but who still witness the violence, are scathed.⁶⁶ Witnessing violence has been documented to have a deleterious impact on a child's emotional well-being.⁶⁷ These children experience heightened rates of behavioral problems, social difficulties, hyperactivity, anxiety, withdrawal, and learning difficulties.⁶⁸

Sadly, these children also have a greater likelihood of repeating the domestic violence dynamics they have experienced in their families as they go forward into adulthood.⁶⁹ When the boys become adult males, they have a greater chance of becoming batterers themselves.⁷⁰ And, when the girls become adult females, they are more likely to enter into abusive situations.⁷¹ And, the legacy of domestic violence continues.

II. HONORING THE PERSONAL AGENCY OF SURVIVORS OF DOMESTIC VIOLENCE

Whether we choose to attach the label "survivor" or the label "victim" to describe an individual who has endured domestic violence is a decision that shapes our values, beliefs, and

⁶⁴ See Johnston, *supra* note 26, at 22.

⁶⁵ See Johnston, *supra* note 26, at 22; see also LUNDY BANCROFT, *supra* note 25, at 246-47; see also BANCROFT & SILVERMAN, *supra* note 7, at 45-46.

⁶⁶ See Johnston, *supra* note 26, at 22; see also BANCROFT & SILVERMAN, *supra* note 7, at 37-39.

⁶⁷ See Johnston, *supra* note 26, at 22; Catherine C. Ayoub, Robin M. Deutsch, & Andronicki Maraganore, *Emotional Distress in Children of High Conflict Divorce: The Impact of Martial Conflict and Violence*, 37 FAM. & CONCILIATION CTS. REV. 297, 297-301 (1999); see also BANCROFT & SILVERMAN, *supra* note 7, at 37-39.

⁶⁸ See Ayoub, Deutsch, & Maraganore, *supra* note 66, at 299-300; see also BANCROFT & SILVERMAN, *supra* note 7, at 38-39.

⁶⁹ Steven P. Swinford et al., *Harsh Physical Discipline in Childhood and Violence in Later Romantic Involvements: The Mediating Role of Problem Behaviors*, 62 J. MARRIAGE & FAM. 508, 508 (2000); see Ayoub, Deutsch, & Maraganore, *supra* note 66, at 299.

⁷⁰ See DONALD G. DUTTON, *THE ABUSIVE PERSONALITY* 34-39 (1998); see also BANCROFT & SILVERMAN, *supra* note 7, at 38 (noting children exposed to domestic violence are more aggressive with peers and nonfamily members as well); see also Steven P. Swinford et al., *supra* note 69, at 514 ("[A]busive punishment in childhood significantly enhances the propensity to perpetrate violence against a romantic partner, both directly and indirectly.").

⁷¹ See Steven P. Swinford et al., *supra* note 69, at 509 ("Several studies have found that harsh physical punishment in childhood or adolescence is associated with an elevated propensity both to abuse and be abused in intimate relationships.").

perceptions about that individual and the domestic violence they experience.⁷² We can look at a survivor's victimization, her agency, or both.⁷³ For the legal and social service communities, the label "survivor" refocuses their interventions on the capacity of individuals, rather than on their victimization.⁷⁴ And, for the individuals, the label "survivor" acknowledges their skill to survive an abusive situation and their capacity to move forward and heal.⁷⁵ Thus, "survivor" recognizes individuals' personal agency, survival skills, emotional health, and altruistic commitment to keeping their children safe.⁷⁶ What a different image from the image of weakness, helplessness, and passivity evoked by the word "victim!"⁷⁷

Looking back to the 1970's when domestic violence activism sparked, the "victimization" label was a potent tool to help politicize and publicize the scourge of domestic violence.⁷⁸ But, as the domestic violence movement continues to evolve, there is re-examination of the negative impact the "victimization" label has had, not only on survivors, but also on the courts, the community, and the professionals from which survivors solicit support.⁷⁹ Research bears out that the word "victim" may be an inaccurate label for many individuals who have survived domestic violence, since it often obscures a survivor's skills and competencies.⁸⁰

Looking at the individual through a "survivor" lens, we see how the survivor exercises her influence on a daily basis to stay alive

⁷² See Jennifer L. Dunn, "Victims" and "Survivors": *Emerging Vocabularies of Motive for "Battered Women Who Stay"*, 75 SOC. INQUIRY 1, 2 (2005) (noting that victims are presented as trapped and survivors are shown as making choices).

⁷³ See ELIZABETH M. SCHNEIDER, *supra* note 31, at 84.

⁷⁴ See *id.* at 61; see also Dunn, *supra* note 72, at 5 (noting that "survivor theory" is oriented toward the "continuing, active efforts battered women make to understand their situation and to provide for the safety of themselves and their children . . .").

⁷⁵ See Dunn, *supra* note 72, at 5, 21–22; ELIZABETH M. SCHNEIDER, *supra* note 31, at 61–62 (noting that recent work on battering emphasizes women's survival skills and resources and purposefully characterizes battered women not as victims but as survivors).

⁷⁶ See Jennifer L. Dunn, *supra* note 72, at 21–22.

⁷⁷ See *id.*

⁷⁸ *Id.* at 3–4, 6 (describing battered women as "victims" was necessary in order to construct their innocence, since a typical victim cannot play any part in their own victimization).

⁷⁹ See ELIZABETH M. SCHNEIDER, *supra* note 31, at 61–62 (noting that the term "battered woman" did not focus enough on the problem of male violence); see also Jennifer L. Dunn, *supra* note 72, at 3–4 ("[V]ictimology has traditionally been concerned with attributing responsibility to victims as well as to victimizers.").

⁸⁰ See ELIZABETH M. SCHNEIDER, *supra* note 31, at 61–62.

in a horrific situation.⁸¹ Survivors regularly make strategic decisions about how to keep their children and themselves safe in a way that minimizes the frequency of incidents that might enrage the batterer.⁸² These survival skills are in many ways analogous to those chronicled by prisoners in concentration camps who have exercised their power to survive the atrocities that were meted out.⁸³ Even when survivors leave an abusive relationship, a time of heightened danger that challenges batterers' control, survivors regularly draw on these survival skills to remain safe.⁸⁴

Agency is the essence of being a survivor. Social cognitive theorists have labeled this ability to intentionally "influence one's functioning and life circumstances" as agency.⁸⁵ These theorists explain that agency is expressed in three different forms, each offering opportunities to influence one's circumstance. The three forms of agency are individual, proxy, and collective.⁸⁶ Using these different modes of expressing agency, survivors may influence their environment by exercising their individual efforts, by having others with knowledge and resources act for them to secure the desired results, or by working in collaboration with others.⁸⁷ Of importance, an individual's agentic capabilities may be reinforced and strengthened by experiences that reinforce their efficacy.⁸⁸ And, there is a correlation between belief in one's efficacy and belief in one's capacity.⁸⁹ If an individual believes that his or her actions will yield the desired results, then that individual will also believe that he or she has capacity to influence the environment around them.⁹⁰

Following this thinking, courts, lawyers, and mental health professionals would want to work with families of domestic

⁸¹ See Albert Bandura, *Toward a Psychology of Human Agency*, 1 PERSPECTIVES PSYCHOL. SCI. 164, 165 (2006).

⁸² *Id.* at 167–68.

⁸³ See VIKTOR FRANKEL, *MAN'S SEARCH FOR MEANING* (1992) (1946); see also *LA VITA È BELLA* (Miramax Films 1997).

⁸⁴ Dunn, *supra* note 72, at 5, 19–21.

⁸⁵ See Bandura, *supra* note 81, at 164.

⁸⁶ *Id.* at 165.

⁸⁷ See *id.*; see also Gregory C. Smith et al., *The Effects of Interpersonal and Personal Agency on Perceived Control and Psychological Well-Being in Adulthood*, 40 GERONTOLOGIST 458, 459 (2000); see also Dunn, *supra* note 72, at 18–21.

⁸⁸ See Bandura, *supra* note 81, at 165.

⁸⁹ See *id.*

⁹⁰ See *id.* at 170.

violence in ways that continue to empower a survivor's agency.⁹¹ It remains ambiguous whether courts, concerned with the safety and politics of domestic violence, are correct in excluding all families with a history of domestic violence from participating in dispute resolution forums.⁹² Should survivors and their families be allowed to participate in dispute resolution forums, if they wish to? As forums for empowerment and self-determination, might dispute resolution interventions be a welcomed choice for those survivors who would rather not take the risk of unfavorable determinations in the fault-based model of the courts? How can we mobilize the agency of survivors to enable resolutions of parenting conflicts that are more likely to minimize the violence?⁹³

III. PARALLEL PARENTING AS A DEFAULT

Fathers' rights groups and domestic violence advocates remain engaged in a hotly politicized debate in which parenting rights and domestic violence protections are viewed as competing interests.⁹⁴ Amidst this political backdrop, this debate continues to get played out in contested parenting matters where there are also concomitant explicit or implicit domestic violence allegations.⁹⁵ The preservation of parental rights becomes enmeshed with the substantiation of domestic violence allegations.⁹⁶ Too often, this confluence results in incongruent outcomes that obscure the issue of safety and perpetuates the opportunities for abuse.⁹⁷ For example, sometimes custody is awarded to the batterer for the reasons discussed herein.⁹⁸ Other times, in a Herculean effort to just settle the case at the eleventh hour, permutations of shared parenting are agreed upon, in which the batterer and survivor are required to have

⁹¹ See Ver Steegh & Dalton, *supra* note 22, at 468–69 (noting a need for ongoing collaborative endeavors and interdisciplinary collaboration).

⁹² See *id.* at 468 (noting that if a family is identified as having experienced violence, family members may be discouraged from using the processes and services that could be helpful).

⁹³ See. Dunn, *supra* note 72, at 12 (describing how shelters and services for survivors reinforce their sense of agency).

⁹⁴ See SCHEPARD, *supra* note 15, at 95; see also Ver Steegh, *supra* note 27, at 1418–26.

⁹⁵ See SCHEPARD, *supra* note 15, at 96–99.

⁹⁶ See *id.*

⁹⁷ See *id.*

⁹⁸ See Schneider, *supra* note 13, at 360; see also MEIER, *supra* note 13.

ongoing engagement with each other over parenting issues.⁹⁹ Even in those cases where a survivor is believed and awarded custody, the parenting agreement may still provide that parenting transitions take place in a way that mandates regular interaction at the survivor's residence during the exchange of the children.¹⁰⁰ All of these parenting arrangements provide opportunities for abuse, control, and conflict.

One beneficial modification that would minimize such incongruent results would be to have a presumption of parallel parenting as a default in all contested parenting cases, whether or not there are allegations of domestic violence.¹⁰¹ Parallel parenting allows parents to remain engaged with their child while remaining disengaged from the other parent.¹⁰² This arrangement preserves each parent's relationship with the child, while acknowledging that there is conflict with the other parent.¹⁰³ In a parallel parenting relationship, each parent has an independent relationship with the child, defined by the court or by agreement, that allows each parent to parent his or her child without input from or coordination with the other parent.¹⁰⁴ Each parent bears the responsibility of getting requisite parenting information from schools, doctors, camps, and coaches.¹⁰⁵ Moreover, transitions take place at neutral locations such as school or daycare, so the parents do not need to see each other.¹⁰⁶ Emergencies are the only reason for contact.¹⁰⁷

Parallel parenting as the default instead of shared parenting will enable the discourse to shift from the losing debate about whether or not there is actually domestic violence to the more fruitful discussion about how to disengage parents in conflict, regardless of fault, whether real or contrived.¹⁰⁸ It reinforces a

⁹⁹ See SCHEPARD, *supra* note 15, at 31–35.

¹⁰⁰ See BANCROFT & SILVERMAN, *supra* note 7, at 98–105.

¹⁰¹ See generally PHILIP M. STAHL, *PARALLEL Parenting for PARENTING FOR HIGH CONFLICT FAMILIES, PARENTING AFTER DIVORCE*, Nov., 2001, <http://www.parentingafterdivorce.com/pdfs/.../ParallelParentingForHighConflictFamilies.pdf>.

¹⁰² See *id.* at 5;; see also SCHEPARD, *supra* note 15, at 35–36; AFCC Task Force on Parenting Coordination, *supra* note 10, at 165–66 (discussing parallel parenting in the context of parents utilizing a parenting coordinator)..

¹⁰³ See STAHL, *supra* note 101, at 5.

¹⁰⁴ See *id.* at 5;; see also SCHEPARD, *supra* note 15, at 35–36.

¹⁰⁵ See STAHL, *supra* note 101, at 6.

¹⁰⁶ See *id.*

¹⁰⁷ See *id.* at 6–7.

¹⁰⁸ See Ver Steegh & Dalton, *supra* note 27, at 464.

survivor's personal agency and respects each parent's right to parent.¹⁰⁹ Politically, parallel parenting honors the concerns of fathers' rights and domestic violence activists.¹¹⁰ Most important, parallel parenting provides a parenting framework designed to safeguard children's psychological welfare by minimizing opportunities for conflict they may witness.¹¹¹

IV. ALTERNATIVE DISPUTE RESOLUTION FORUMS

Empowerment and self-determination, hallmarks of alternative dispute resolution, are an appealing option for those who prefer to rely on their own decision-making capacities, in lieu of those of a judge. And as has been elucidated, it may be a welcome choice for some survivors and their families. Critics of alternative dispute resolution, recounting horrors resulting from poorly trained neutrals, forced cooperation when it was unsafe to do so, and invalidation of the abuse experienced, have argued that alternative dispute resolution forums are dangerous options.¹¹² And yes, just like in court, serious mistakes have been made.

However, the concerns have been heeded, lessons have been learned, and modifications have been made to provide a safer, more responsive process. Some in the domestic violence community remain stuck in the politics of domestic violence. Others in the domestic violence community that have recalibrated their posture are collaborating with alternative dispute resolution professionals to develop better programs, and have assumed a more nuanced stance on the options.¹¹³ What are some of these options? Parent education,¹¹⁴ mediation,¹¹⁵ and parenting coordination¹¹⁶ are empowering options for select

¹⁰⁹ See STAHL, *supra* note 101, at 5; see also Dunn, *supra* note 72, at 20 (noting that the term survivor connotes agency, decision making, and choice).

¹¹⁰ See AMERICAN COALITION FOR FATHERS AND CHILDREN, MISSION STATEMENT, <http://acfc.convio.net/site/PageServer?pagename=MissionStatement> (last visited Jan. 24, 2010) ("We believe equal, shared parenting time or joint custody is the optimal custody situation.").

¹¹¹ See STAHL, *supra* note 101, at 7–8.

¹¹² See Grillo, *supra* note 19, at 1600–1605; see also Nina Zollo & Robin Thompson, *Protecting Victims of Domestic Violence in the Parenting Coordination Process*, 2 A.B.A. COMMISSION DOM. VIOLENCE Q. E-NEWSL. 1–3 (2006).

¹¹³ See Ver Steegh & Dalton, *supra* note 22, at .478–80.

¹¹⁴ See Report of the Chief Administrator, *supra* note 4, at 50.

¹¹⁵ See Ver Steegh, *supra* note 11, at 159–70; see also Firestone & Weinstein, *supra* note 12, at 203–07.

¹¹⁶ AFCC Task Force on Parenting Coordination, *supra* note 10, at 169; see Elayne E.

families with domestic violence issues.

A. Parent Education

Parent Education programs, as the name explains, are educational programs for divorcing or separating parents that inform about the situation-specific parenting issues that arise during and after divorce.¹¹⁷ These programs may be offered privately or court-annexed, and can be voluntary or mandatory.¹¹⁸ Although parents may grudgingly attend at first, many soon find the programs are an important source of valuable information.

Yet, members of the domestic violence community have safety and programmatic concerns with parent education programs and have urged modifications.¹¹⁹ These urged modifications include: a pre-screening for domestic violence that allows individuals to opt out of attendance without penalty; prohibiting husbands and wives from attending the same class, for safety reasons; and avoiding guiltting participants into engaging in cooperative parenting for their child's sake.¹²⁰

In response to these concerns, parent education providers have integrated domestic violence information into parent education curriculums.¹²¹ Reading lists and resources that are disseminated at parent education programs now include books and resources on domestic violence.¹²² As a rule, husbands and wives must attend separate programs.¹²³ Education presenters

Greenberg & Marvin Aronson, *Parenting Coordination: Help for High-Conflict Families*, N.Y. L.J., Nov. 16, 2006, at 4.

¹¹⁷ See Report of the Chief Administrator, *supra* note 4, at 50; see also Rules of the Chief Administrator of the Courts, N.Y. COMP. CODES R. & REGS. tit. 22, § 144.1 (West 2009) ("The New York State Parent Education and Awareness Program ("Program") provides information to parents about the impact of parental breakup or conflict on children, how children experience family change, and ways in which parents can help their children manage the family reorganization.").

¹¹⁸ See Susan L. Pollet, *A Nationwide Survey of Programs for Children of Divorcing and Separating Parents*, 47 FAM. CT. REV. 523, 524, 530-31 (2009).

¹¹⁹ See Jeffery T. Cookson et al., *Prospects for Expanded Parent Education Services for Divorcing Families with Children*, 40 FAM. CT. REV. 190, 191 (2002); see also Geri S.W. Fuhrmann, Joseph McGill, & Mary E. O'Connell, *Parent Education's Second Generation: Integrating Violence Sensitivity*, 37 FAM. & CONCILIATION CTS. REV. 24, 25 (1999).

¹²⁰ See Report of the Chief Administrator, *supra* note 4, at 44, 50; see also Fuhrmann, McGill, & O'Connell, *supra* note 119, at 28-30.

¹²¹ See Cookson et al., *supra* note 119, at 195.

¹²² See Fuhrmann, McGill, & O'Connell, *supra* note 119, at 31-33.

¹²³ See *id.* at 33.

now offer information about a range of parenting options, from cooperative to parallel, stressing the priority of safety.¹²⁴ For many, this may be the first time they have received this information. An important consequence of incorporating information about domestic violence into parenting education programs is that participants regularly come forward at the conclusion of the program and confide their domestic violence, something they had not done prior to attending the program.¹²⁵ So we see educational forums that provide parents with information about domestic violence provide opportunities for empowerment, where parents can learn about a range of options and make choices based on what they believe to be best for them and their children.

B. Mediation

Mediation is another dispute resolution forum that may be appropriate for some families of domestic violence. Mediation is nothing more than an assisted negotiation. An attractive feature of mediation is that it allows participants to modify the process, make their own choices, and shape their own resolution.¹²⁶ A welcomed departure from the fault-based model of the court, mediation often offers a more problem-solving focus.¹²⁷ Expectedly, there are caveats. Not all mediation practices are suitable for families who have identified or unidentified domestic violence,¹²⁸ and not all families are suitable for mediation.¹²⁹

¹²⁴ See *id.* at 29–30; see also Johnston, *supra* note 26, at 29–31.

¹²⁵ See Fuhrmann, McGill, & O'Connell, *supra* note 119, at 29–30. Self-identification, however, is difficult for those involved. *Id.* Professor Greenberg, the author of this article, was the director of a parent education program in Queens County, New York, for five years. Queens County is the most ethnically diverse county in the nation. See Michelle O'Donnell, *In Queens, It's the Glorious 4th, and 6th, and 16th, and 25th . . .*, N.Y. TIMES, July 4, 2006, at B1, available at <http://www.nytimes.com/2006/07/04/nyregion/04fourth.html>?

¹²⁶ *Id.*

¹²⁷ See Johnston, *supra* note 5, at 470–72.

¹²⁸ See *id.* at 471.

¹²⁹ See *id.* at 472; see also BANCROFT & SILVERMAN, *supra* note 7, at 124–25 (“Batterers can manipulate the mediation process by beginning with an extreme set of demands and then offering compromises from those positions; this strategy can have the effect of causing the mother to appear inflexible . . .” and *a.*”). As a result, mediation may not be effective unless it is entered into voluntarily and strict guidelines are adhered to; see also. See Ver Steegh & Dalton, *supra* note 22, at 466–69 (expressing the need for more than one screening process to be undertaken).

¹²⁹ See Johnston, *supra* note 5, at 472; see also Steegh & Dalton, *supra* note 22, at 4456.

An important benefit of mediation is that the structure and the format may be modified to accommodate the needs of the particular participants,¹³⁰ which is an opportunity for survivors to exercise their personal sense of agency. Domestic violence activists have raised safety and process concerns about mediation that have spurred responsive modifications and developed invaluable collaborations between the domestic violence and mediation communities.¹³¹ For example, the Standards of Practice for Family and Divorce Mediation, the ethical guidelines for divorce and family mediators, was shaped with input from members of the domestic violence community.¹³² Standard X provides: *A family mediator shall recognize a family situation involving domestic abuse and take appropriate steps to shape the mediation process accordingly.*¹³³

From this mandate, responsible practice dictates that mediators have an ongoing obligation to screen for domestic violence.¹³⁴ As was mentioned, even if individuals do not self-identify, the act of screening itself signals that domestic violence is an important concern. Ethical mediators should also have safety protocols in place in the event they are needed.¹³⁵ Participants may bring advocates, lawyers, and other supports to assist them in mediation. Decisions need not be made on the spot, if at all, but may be considered and consulted, rather than coerced. Court always remains an option, if mediation does not yield the desired outcome.

A less frequently discussed, but nonetheless important topic is the influence a mediator's ideology has on shaping and maintaining a safe mediation forum. Mediation ideology determines how the conflict will be defined, what role the neutral will play, and how the parties will participate. Moreover, the mediator's choice of mediation ideology is a value-laden choice driven by the mediator's assumptions about the people

¹³⁰ See also Nancy Ver Steegh & Claire Dalton, *supra* note 22, at 457-585.

¹³¹ See *id.* at 455-460.

¹³² THE SYMPOSIUM ON STANDARDS AND PRACTICE, MODEL STANDARDS OF PRACTICE FOR FAMILY AND DIVORCE MEDIATION (2001), available at www.abanet.org/family/reports/mediation.pdf [hereinafter *Standards of Practice*]; see also Murphy & Robinson, *supra* note 23, at 59-60.

¹³³ See *Standards of Practice*, *supra* note 132, at 1.

¹³⁴ See *id.*; see also Ver Steegh & Dalton, *supra* note 22, at 461.

¹³⁵ See Murphy & Robinson, *supra* note 23, at 65-67.

mediating, and mediator's biases about conflict, and the mediator's role and beliefs about what works.¹³⁶ Critics of mediation for domestic violence families point to a parade of horrors led by coercive, directive, and poorly trained mediators who have challenged the veracity of the domestic violence allegations, corralled survivors into resolution and have forced untenable agreements on survivors.¹³⁷ One antidote to ward off these toxic consequences is to use well-trained mediators in a non-directive style of mediation such as transformative mediation.

C. Parenting Coordination

Once there is a parenting agreement in place, whether negotiated or ordered by the court, a persistent problem in domestic violence cases is how to get the parents to comply with parenting orders. Parenting coordination is a child-focused dispute resolution process for high conflict parents who, unable to implement their parenting plans because of their ongoing conflict, habitually enlist the court to re-define parenting orders and make day-to-day parenting decisions.¹³⁸ Specially trained professionals called parenting coordinators help these parents resolve their parenting conflicts themselves, comply with their parenting plans and become less dependent on the court to implement their day-to-day parenting.¹³⁹ In their work with the parents, the parenting coordinator uses a spectrum of dispute resolution skills. These skills include educating parents about parenting, coaching parents to focus on helping their child instead of battling the other parent, and incorporating mediation skills to assist parents to resolve parenting conflicts themselves. If parents are still unable to make a decision, the parenting coordinator will make parenting decisions for them.¹⁴⁰ The parenting coordinator will only help make those parenting decisions that both the court and the parents agree the parents want help.

¹³⁶ See *id.*

¹³⁷ See *id.*

¹³⁸ See AFCC Task Force on Parenting Coordination, *supra* note 10, at 169; see also Greenberg & Aronson, *supra* note 116..

¹³⁹ See Greenberg & Aronson, *supra* note 116.

¹⁴⁰ See *id.*

Again, the domestic violence community has raised concerns about the appropriateness of parenting coordination for families with domestic violence.¹⁴¹ A central fear is that the batterer will manipulate the parenting coordinator to take his side or manipulate the process by running up outrageous bills for parenting coordination services that are ill-afforded by survivors.¹⁴² Addressing these concerns, the Guidelines for Parenting Coordination that were promulgated by the AFCC Task Force on Parenting advise that parenting coordinators should have specialized protocols for working with families with domestic violence. Only parenting coordinators with special expertise should take such cases. The Guidelines warn that, in working with these families, the parenting coordinator should function primarily as an enforcer of the agreement, avoiding the other roles, so that the batterer will have minimal opportunity to manipulate the process.¹⁴³ Working with a parenting coordinator who is an enforcer of the parenting agreement minimizes conflict and supports the independent functioning of each parent during his or her defined parenting time. Mediation, parent education, and parenting coordination provide opportunities for children, survivors, and batterers to minimize the conflict in their parenting interactions. With programmatic safeguards, each intervention offers families a different choice to enable them to parent in peace and safety.

CONCLUSION

This discussion about domestic violence is one of those difficult conversations that calls into question personal, professional and societal values.¹⁴⁴ Domestic violence activists have skillfully politicized the issue and have succeeded in drawing much needed attention to the problem of domestic violence. But to keep this discourse at a political level, and ignore the day-to-day plight of survivors and their children, is a dangerous choice that disservices families and ourselves. Nothing in this article should be

¹⁴¹ See Zollo & Thompson, *supra* note 112.

¹⁴² See *id.*

¹⁴³ See AFCC Task Force on Parenting Coordination, *supra* note 10, at 167–68.

¹⁴⁴ See generally DOUGLAS STONE, BRUCE PATTON & SHEILA HEEN, *DIFFICULT CONVERSATIONS: HOW TO DISCUSS WHAT MATTERS MOST* (2000).

misconstrued as a cry to take domestic violence out of the court system and to absolve batterers of culpability. Nor should this be misinterpreted as a statement about all people. Rather, the author has attempted to further the discussion about how to expand the available options, realizing none are perfect, from which survivors and their families may choose to manage their day-to-day parenting conflicts . . . until we can change our legacy.

